

HOUSE FINANCE COMMITTEE

March 19, 2021

2:32 p.m.

[Note: Meeting Reconvened from 3/18/21 1:30 p.m. See separate minutes for detail.]

2:32:03 PM

CALL TO ORDER

Co-Chair Merrick called the House Finance Committee meeting to order at 2:32 p.m.

MEMBERS PRESENT

Representative Neal Foster, Co-Chair
Representative Kelly Merrick, Co-Chair
Representative Dan Ortiz, Vice-Chair
Representative Ben Carpenter
Representative Bryce Edgmon
Representative DeLena Johnson (via teleconference)
Representative Andy Josephson
Representative Bart LeBon
Representative Sara Rasmussen
Representative Steve Thompson
Representative Adam Wool

MEMBERS ABSENT

None

ALSO PRESENT

Representative Mike Cronk

PRESENT VIA TELECONFERENCE

Representative DeLena Johnson; Megan Wallace, Director, Legislative Legal Services, Alaska State Legislature; Adam Crum, Commissioner, Department of Health and Social Services; Susan Pollard, Assistant Attorney General, Department of Law.

SUMMARY

HB 76 EXTENDING COVID 19 DISASTER EMERGENCY

HB 76 was HEARD and HELD in committee for further consideration.

Co-Chair Merrick reviewed the meeting agenda. She recognized Representative Mike Cronk in the audience.

#hb76

HOUSE BILL NO. 76

"An Act extending the January 15, 2021, governor's declaration of a public health disaster emergency in response to the novel coronavirus disease (COVID-19) pandemic; providing for a financing plan; making temporary changes to state law in response to the COVID-19 outbreak in the following areas: occupational and professional licensing, practice, and billing; telehealth; fingerprinting requirements for health care providers; charitable gaming and online ticket sales; access to federal stabilization funds; wills; unfair or deceptive trade practices; and meetings of shareholders; and providing for an effective date."

[2:32:53 PM](#)

Co-Chair Merrick listed individuals available online for questions. [Note: The committee began hearing amendments to HB 76 on 3/18/21 at 1:30 p.m. See separate minutes for detail.]

Vice-Chair Ortiz MOVED to ADOPT Amendment 3, 32-GH1011\B.21 (Dunmire, 3/15/21) (copy on file):

Page 1, line 7:

Delete "and"

Following "shareholders;":

Insert "and school operating funds;"

Page 10, following line 15:

Insert a new bill section to read:

"Sec. 12. The uncodified law of the State of Alaska is amended by adding a new section to read:

SCHOOL OPERATING FUNDS. (a) Notwithstanding AS 14.17.505(a), a school district may accumulate in a fiscal year an unreserved portion of its year-end fund balance in its school operating fund, as defined in

regulation by the Department of Education and Early Development, in any amount.

(b) Notwithstanding AS I 4.1 7.505(b), the unreserved portion of the year-end operating fund balance of a school district for the preceding fiscal year may not be used to reduce the state aid paid to that school district in the current fiscal year."

Renumber the following bill sections accordingly.

Page 10, line 31:

Delete "Sections 1 - 3 and 5 - 12"

Insert "(a) Sections 1 - 3, 5 - 11, and 13"

Page 11, following line 4:

Insert a new subsection to read:

"(b) Section 12 of this Act is repealed June 30, 2023."

Representative Carpenter OBJECTED.

[2:33:25 PM](#)

Vice-Chair Ortiz reviewed the amendment with a prepared statement:

Under current law, AS 14.17.505, school districts are prohibited from carrying forward more than 10 percent of their unreserved fund balance into the next fiscal year. This amendment, if adopted, waives that provision for a two-year period in order to offer more flexibility to districts in managing their financial resources.

On April 9, 2020, at the beginning of the pandemic, Governor Dunleavy issued COVID-19 disaster order of suspension No. 3, which suspended AS 17.505 and ACC 09.160, also referred to as the 10 percent provision. This allowed school districts to carry forward more than 10 percent of their end of the year unreserved balance. Twenty seven of the fifty three school districts use this waiver to carry forward approximately \$15 million into the current school year. With the expiration of the state disaster declaration, school districts are again required to adhere to the 10 percent provision.

In FY 21, school districts experienced tremendous fluctuations in student enrollment. Districts with established statewide correspondence programs saw a large increase in students and subsequently state revenue. Foundation dollars are distributed to school districts on a monthly basis with distribution in the first nine months of the fiscal year based on the former year ADM count. State entitlement is then trued up in the last three months of the fiscal year to align a district's state revenues to their full foundation entitlement based on the actual current student count.

It is now the final months of the fiscal year. The districts are making decisions on how to best spend their remaining funds. A temporary waiver of the 10 percent provision offers districts flexibility in meeting the continued challenges they face as they adapt to COVID and hopefully, post-COVID school environment.

Vice-Chair Ortiz relayed that adoption of the amendment would restore the intention of Governor Dunleavy's first disaster declaration that allowed school districts to carry forward more than 10 percent.

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Representative Carpenter spoke to his objection. He believed the committee had heard in a previous meeting that while school districts had suffered some very unusual circumstances and financial strains, they were doing fine financially. He did not believe the amendment or bill were necessary. He provided a recent letter from the governor addressed to the presiding officers of the legislature clarifying the emergency declaration was unnecessary [letter dated March 18, 2021, addressed to House Speaker Louise Stutes (copy on file)]. He believed the entire process the committee was currently undergoing was superfluous.

Representative Josephson supported the amendment. He addressed the fiscal direction the state and local governments were heading. He believed it would not be possible to true up and know how agencies, nonprofits, and districts were fairing until about 2023 or 2024. He was uncertain the experts in Juneau could tell the legislature

precisely how the American Rescue Plan Act (ARPA) funds could be used because the guidance had not yet been released. He reasoned that getting to the truth of any matter would be especially difficult for the next couple of years because of the large amount of incoming federal funding. He highlighted that some school districts under the foundation formula were suffering more than others. He detailed that there had been significant downward pressure on school budgets, there had not been a Base Student Allocation (BSA) increase in "a long time," and the last \$30 million increment had been vetoed. He pointed out the complexity of the situation. He believed that in the current situation it was best to allow districts to keep their lapsed funds in excess of 10 percent for the next two years.

Representative Josephson responded to Representative Carpenter's statements. He highlighted that 30 days earlier the governor had asked the legislature to pass HB 76 in the bill's transmittal letter. He considered that the governor could decide in April that he wanted the bill to pass. He speculated that perhaps the governor was not looking forward to the pressure of signing the bill if it passed. He noted that the committee had heard from Ms. [Heidi] Hedberg, Alaska's chief public health officer. He noted that Vice-Chair Ortiz had asked Ms. Hedberg the question and she had replied that the bill met every need the agencies had including the Department of Military and Veterans Affairs (DMVA), Department of Health and Social Services (DHSS), and the command team. He reiterated his support for Amendment 3.

Co-Chair Merrick recognized that Representative Johnson was online. She reminded committee members to limit discussion to the amendment under consideration.

[2:40:11 PM](#)

Representative LeBon supported the amendment. He thought about his past experience on the Fairbanks School Board. He recalled his first impression that the fund balance of the Fairbanks North Star School District was too small. He had asked the fiscal officer why the reserve was so small, and he had been told the district was limited to a certain amount. He supported the amendment because the timing of federal assistance the school districts may receive was unknown. He noted that the amendment would sunset in two

years. He believed extending the option to enable school districts to manage their funding for the most efficiency, encouraged sound fiscal management.

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Representative Wool spoke in support of the amendment. He reported that his school district had taken a major hit and had felt the economic impacts of COVID. He referenced information provided by the Department of Education and Early Development (DEED) in a past meeting listing different impacts of COVID. He noted that the information had included a column showing fund balances in various regions. He stressed that his school district had a fund balance in the 4 percent range, well below the 10 percent cap. He explained that the fund balance was calculated as spendable and figured into the school district's total financial picture. He had spoken with the DEED commissioner who fully expected a significant amount of federal money, a portion of which would go to school districts.

Representative Wool emphasized that the timing of the incoming federal money was unknown. Additionally, the state did not know whether it would be the last of the federal funding. He believed the state should let school districts hold onto the federal funding beyond the 10 percent if it was the last of the incoming funds. He stressed that what the effects of COVID would be on enrollment and health and safety were unknown. He reiterated his support for the amendment. He believed school districts needed the ability to hold onto the reserve funds.

2:43:02 PM

Representative Carpenter remarked that he found it concerning when the chair of the meeting limited comments to "only things that they want to hear." He stated that the issue was large and had taken up multiple meetings. He did not want to be constrained to talking about the amendment. He thought that not allowing conversation about other applicable items that may influence the topic was short sighted. He felt that his comments had been specifically called out. He believed it was clear that the legislature may not understand its own authorities. He agreed that if there was another need for a disaster declaration at any point in the future, the governor alone had the authority to declare an emergency. He emphasized that the authority

did not reside with the legislature. He added that the legislature had not been given the authority to declare a disaster declaration retroactively, no matter how much members would want to do so.

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Representative Edgmon supported the amendment. He shared that he represented many small school districts in House District 37, and he had heard from those districts that HB 76 was a critical tool going forward for numerous reasons. He explained that the issue was not limited to declining enrollments and additional costs related to COVID. He relayed that one school district had to dig deeply to provide what limited broadband capabilities it could in order to deliver remote learning.

Representative Edgmon stressed that the additional costs of keeping schools open in a very uncertain time had been extremely challenging. He believed the bill would provide additional tools going forward. He remarked that the bill did not have a fiscal note and did not necessarily obligate the legislature to fund anything additional. He believed the bill could be a means for school districts in need of more resources with or without COVID. He stated that the resources could come from federal funding sources that otherwise may go unused if they could not be carried over. He thought it was the epitome of "penny wise and pound foolish."

Representative Edgmon clarified that the letter from the governor did not address the specific provision. He pointed out that the governor's letter addressed the disaster declaration, which was a separate section of HB 76, albeit both the amendment and provisions in the bill would be in uncodified law.

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Co-Chair Foster referenced Co-Chair Merrick's statement asking members to speak to the amendment. He clarified his belief that she had been speaking to a different member. He did not believe the remark had been directed to the member who had spoken about it [prior to Representative Edgmon's comments above]. He thought perhaps Co-Chair Merrick had been speaking in a broad sense. He supported the need to speak to the amendment and agreed there needed to be some

latitude, especially if a topic was pertinent. He believed it was a long standing tradition in terms of not veering too far away from an amendment. He recognized the co-chair had discretion in evaluating whether the conversation moved too far from a topic under consideration. He expressed support to the co-chair.

Co-Chair Merrick thanked Co-Chair Foster and noted that when the committee voted on the bill, members would have time to make their opinions heard.

[2:47:37 PM](#)

Representative Carpenter MAINTAINED the OBJECTION.

A roll call vote was taken on the motion.

IN FAVOR: Josephson, LeBon, Edgmon, Ortiz, Thompson, Wool, Rasmussen, Johnson, Merrick, Foster
OPPOSED: Carpenter

The MOTION PASSED (10/1). There being NO further OBJECTION, Amendment 3 was ADOPTED.

[2:48:47 PM](#)

Representative Rasmussen WITHDREW Amendment 4, 32-GH1011\B.32 (Dunmire, 3/16/21) (copy on file).

Representative Rasmussen WITHDREW Amendment 5, 32-GH1011\B.33 (Dunmire, 3/16/21) (copy on file).

[2:48:55 PM](#)

Co-Chair Merrick asked Megan Wallace, director of Legislative Legal Services to explain Section 12 of the legislation dealing with civil liability.

MEGAN WALLACE, DIRECTOR, LEGISLATIVE LEGAL SERVICES, ALASKA STATE LEGISLATURE (via teleconference), relayed that she was available for any additional questions following discussion on Section 12 in the meeting the previous afternoon.

Co-Chair Merrick asked Ms. Wallace to provide a brief summary of Section 12.

Ms. Wallace explained that Section 12 of the bill specified that persons would not be liable for conduct occurring in the gap period between the time the disaster declaration expired and when the legislature extended the disaster declaration via HB 76. The liability provision was intended to protect people from expectations of conduct that was not mandated at the time they acted in a specific manner. The section provided general liability protection for actions taken that may differ from future mandates or orders that had not been in place at the time of the actions.

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Representative LeBon viewed the topic as a question of reasonable conduct and gross negligence. He stated that if a person acted in a reasonable manner during the [gap] time period, the civil liability would protect them under reasonable conduct. He asked if there would be a legal exposure if an individual acted with malice or gross negligence.

Ms. Wallace replied that the language currently in the bill was a broad liability protection. She suspected if a person were accused of ordinary or gross negligence, they might claim protection under the liability provision.

Representative LeBon provided a hypothetical example where a person flew into Anchorage and opted to skip the [COVID] testing, which was no longer mandated after February 14. Under the scenario, the person later on found they were COVID positive and may have passed the disease on to another person. He believed the individual deserved to be protected because of the state's decision to not test the individual upon their arrival in Anchorage. He provided a second scenario where an individual flew into Anchorage, knew they were COVID positive, and transmitted the disease once they arrived in Alaska. He asked if the action under the second scenario was an example of gross negligence.

Ms. Wallace responded it was difficult to know what may or may not amount to liability for a person whether it was negligence or gross negligence. She opined that the liability protection in the bill protected conduct irrespective of whether the person complied with the order, proclamation, or declaration. She elaborated that whether the testing was or was not mandated or discretionary there was a presumption that a person would not knowingly

transmit the disease to other unknowing persons. She did not want to speculate; however, there could be circumstances where the knowing conduct amounted to something more serious than civil liability. She stated there could be some potential criminal violation for such conduct; however, she did not want to opine on the issue.

2:55:27 PM

Representative LeBon provided a hypothetical scenario where a legislator tested positive for COVID in the Capitol Building. He expounded that the individual would be instructed to spend the following ten days in quarantine. He believed if the individual snuck into the building before the end of the ten day period, it would constitute gross negligence. He emphasized that if the person knew they were coming back into the building early it would be gross negligence.

Representative Wool surmised that the legislation covered the timeframe between February 14 and whenever the bill passed. He believed that if the bill were to pass as written, the civil liability would cover February 14 through the date the declaration ended on September 30. He asked for the accuracy of his statement.

Ms. Wallace replied that the civil liability provision protected action taken on or after February 14 and before the effective date of the bill. The liability provision was intended to protect people from expectations of conduct that was not mandated at the time they acted in a specific manner. The provision only applied to the gap period, but it would apply to any order or mandate issued by the governor from the effective date of the bill through the end of the disaster declaration (under Section 2 of the legislation).

Representative Wool stated that he was having difficulty because much of the issue was abstract. He remarked on Ms. Wallace's statement that she was unable to speak to the specific examples provided. He thought that under a disaster declaration that certain things were loosened. He cited the ability to do telehealth or get certain medicines as examples. He believed a doctor would not be held liable for something they did or ordered under the loosened restrictions. He stated his understanding that during the period between February 14 through the bill's effective

date that there was no disaster declaration and things were effectively back to "normal." He provided a hypothetical example taking place between February 14 and the effective date of the bill. He considered a situation where a health provider acted as if there was a disaster declaration, and a patient was mistreated. He stated that under a disaster declaration health providers may have had more latitude. He stated that if the new disaster declaration passed, there would be a gray area where providers may have been acting as if there had been a declaration in place.

Ms. Wallace did not believe it accurately reflected what the provision covered. She provided an example regarding the liability provision in Section 12 of the bill. She highlighted that in the absence of a disaster declaration, the state currently had discretionary testing for travelers entering Alaska. She provided a scenario where the passage of the legislation returned the state to disaster status and the governor reinstituted a travel mandate requiring travelers to have a negative test or to test upon arrival. Under the scenario, if a person traveled to Alaska during the period of discretionary testing, opted against testing, and unknowingly gave someone COVID, they would have liability protection under Section 12 of the legislation. The person could not be held to the standard that had been reinstituted after their travel took place. She explained it was a general legal principle that would likely apply anyway, but the provision made it very clear that the person could not be held to a standard that was put in place later on because the disaster declaration was not in effect at the time of the conduct. She noted there could be numerous examples that existed.

[3:02:34 PM](#)

Representative Wool stated that the example provided by Ms. Wallace was more of a tightening of restrictions compared to his prior example that reflected a loosening of restrictions. He was concerned that someone who unknowingly or innocently gave COVID to another person could potentially be subject to a lawsuit. He believed a situation involving a person who did not get a test and transmitted COVID was a gray area.

Co-Chair Merrick clarified that Amendment 6 had not yet been moved. The purpose of the current conversation was to

provide clarity on Section 12 of the legislation prior to considering additional amendments.

Representative Josephson considered a scenario where the bill passed on April 1. He asked if Section 12 would apply to events between February 14 and April 1 only.

Ms. Wallace agreed. She clarified that the liability protected a person who did or did not comply with an order, proclamation, or declaration adopted by the governor. She stated it was about conduct that was regulated pursuant to the disaster declaration and health standards prescribed by order, proclamation, or declaration adopted by the governor.

3:05:00 PM

Representative LeBon MOVED to ADOPT Amendment 6, 32-GH1011\B.27 (Dunmire, 3/16/21) (copy on file):

Page 1, line 9, following "vaccines;":

Insert "providing immunity from liability and disciplinary action for occupational licensees for exposure of clients to COVID-19; providing immunity from liability for persons engaging in business and their employees for exposure of customers to COVID-19;"

Page 10, following line 21:

Insert new bill sections to read:

"* Sec. 13. AS 08.02 is amended by adding a new section to read:

Sec. 08.02.022. Licensee liability for client exposure to COVID-19. (a) A licensee is immune from disciplinary action under this title for sickness, death, economic loss, and other damages suffered by a client of the licensee from exposure to novel coronavirus disease (COVID-19) in the course of the licensee's practice of the licensee's trade or profession.

(b) To qualify for immunity under this section, a licensee must have been practicing the licensee's trade or profession in substantial compliance with the applicable federal, state, and municipal laws and health mandates in effect at the time of the client's exposure to COVID-19.

(c) Immunity under this section does not apply to exposure to COVID-19 resulting from the gross negligence, recklessness, or intentional misconduct of a licensee.

(d) Immunity under this section is in addition to any other immunity from liability provided under state or federal law.

(e) In this section, "licensee" has the meaning given in AS 08.01.110.

* Sec. 14. AS 45.45 is amended by adding a new section to read:

Sec. 45.45.940. Business and employee liability for customer exposure to COVID-19. (a) A person who engages in business and an employee of that person when working in the business are immune from civil liability for sickness, death, economic loss, and other damages suffered by a customer from exposure to novel coronavirus disease (COVID-19) while patronizing the business.

(b) To qualify for immunity under this section, the person engaging in business must have been operating the business in substantial compliance with the applicable federal, state, and municipal laws and health mandates in effect at the time of the customer's exposure to COVID-19.

(c) Immunity under this section does not apply to exposure to COVID-19 resulting from the gross negligence, recklessness, or intentional misconduct of a person engaging in business or an employee of that person.

(d) Immunity under this section is in addition to any other immunity from liability provided under state or federal law."

Renumber the following bill sections accordingly.

Page 10, following line 30:

Insert a new bill section to read:

"* Sec. 17. The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. Sections 13 and 14 of this Act apply to novel coronavirus disease (COVID-19) exposure occurring on or after the effective date of this Act."

Renumber the following bill sections accordingly.

Page 11, line 7:

Delete "If this Act takes effect after February 14, 2021, this Act is"

Insert "Sections 1 - 12 and 15 of this Act are"

Representative Josephson OBJECTED for discussion.

Representative Josephson relayed that he wanted to offer an amendment to Amendment 6.

Co-Chair Merrick asked Representative LeBon to explain Amendment 6 first.

Representative LeBon explained that Amendment 6 would provide private sector business protection from civil liability for sickness, death, economic loss, and other damages suffered by a customer from COVID-19. The amendment would also make licensees immune from disciplinary action under state licensing laws for sickness, death, economic loss, and other damages suffered by a client of the licensee in the course of the licensee's practice of their trade or profession. He detailed that in both cases the licensee or business had to be in compliance with applicable federal, state, and municipal laws and health mandates in effect at the time of the exposure. He intended nonprofits to be covered by the liability protection as they too, operate as a business. He expounded that licensees and businesses would still be liable if the exposure was the result of gross negligence, recklessness, or intentional misconduct. He thanked Representative Johnson and her staff for helping with the amendment. He noted that language from Representative Johnson's HB 4 had helped him write the amendment.

Representative LeBon stated that as Alaska got back to work and looked to place the pandemic in the past, it was important for the private sector to have the confidence that it would not be subject to unnecessary or frivolous litigation merely for trying to stay open for business and adhere to the required state or local health mandates, however they may apply. He urged the committee's support.

[3:07:22 PM](#)

Representative Josephson MOVED to ADOPT Amendment 1, 32-GH1011\B.35 (Dunmire, 3/19/21)(copy on file) to Amendment 6.

Page 1, lines 7 - 8 of the amendment:
Delete "Page 10, following line 21:
Insert new bill sections to read:"
Insert "Page 10, lines 16 -21:
Delete all material and insert:"

Page 1 line 9 of the amendment:
Delete "Sec. 13"
Insert "Sec. 12"

Page 2, line 2 of the amendment:
Delete "Sec. 14"
Insert "Sec. 13"

Page 2, line 22 of the amendment:
Delete "Sec. 17"
Insert "Sec. 16"

Page 2. line 24 of the amendment:
Delete "13 and 14"
Insert "12 and 13"

Page 2, line 25 of the amendment:
Delete "the effective date of this Act"
Insert "February 15, 2021"

Page 2, line 31 of the amendment:
Delete "1 - 12 and 15"
Insert "1-11 and 14"

Representative Carpenter OBJECTED for discussion.

Representative Josephson explained that the amendment would strike language in Section 12 that some found to be ambiguous, complicated, and unclear. He detailed that the amendment would move Representative LeBon's Amendment 6 to increase the timeframe. He elaborated that Amendment 1 to Amendment 6 would cover a couple of additional months or more. He noted that the net result was a regular liability law. He highlighted the expired SB 241 law and stated there were some liability issues there that ran through February 14. Following that time period was the provision proposed by Representative LeBon.

Representative LeBon stated that he did not object to Amendment 1 to Amendment 6.

3:09:30 PM

AT EASE

3:10:18 PM

RECONVENED

Representative Rasmussen WITHDREW the OBJECTION.

There being NO further OBJECTION, Amendment 1 to Amendment 6 was ADOPTED.

3:10:50 PM

Representative Wool referenced Representative LeBon's remarks that Amendment 6 included businesses and occupational licenses. He asked for verification that Amendment 6 included healthcare providers even if they were not acting as a business.

Representative LeBon responded that he considered healthcare providers to be businesses.

Representative Josephson WITHDREW the OBJECTION to Amendment 6 as amended.

There being NO further OBJECTION, Amendment 6 was ADOPTED as AMENDED.

3:11:45 PM

Representative Thompson MOVED to ADOPT Amendment 7, 32-GH1011\B.26 (Dunmire, 3/16/21) (copy on file). [Note: due to the length of the amendment it is not included here. See copy on file for details.]

Representative Josephson OBJECTED.

Representative Thompson reviewed the amendment. He read from prepared remarks:

First it eliminates all reference to a disaster declaration and in its place gives the administration public health response authority. This enables the administration to receive federal SNAP allotments under the Families First Coronavirus Response Act and certain other COVID related adjustments or waivers. Requirements to receive funding and waivers is

language starting at: "in response to the ongoing pandemic, the statewide public health emergency posed by COVID-19 and tied to the federal public health emergency and major disaster declarations." This particular language is found on page 2, lines 3 through 5. The amendment deletes the following from the committee substitute and inserts a new legislative intent section. These findings are the basis for the state to continue to receive funding and flexibilities that have been provided or implemented by federal agencies because of the federal authorities that are in place or because of appropriations made available by Congress adds in a formal disaster declaration.

This bill inserts new sections outlining the powers of the governor, the Department of Health and Social Services, and the Department of Military and Veterans Affairs. Inserts a new section relating to civil and criminal liability or a state agency or person performing acts on behalf of the government. It deletes the hold harmless section in HB 76. It does retain parts of HB 76: 1) report of expenditures to the legislature each month with the last report due 60 days after September 30, 2021; 2) professional and occupational licensing section; 3) telehealth section; 4) fingerprint section; 5) shareholder meetings section; 6) online charitable gaming allowance section; 7) informed consent for vaccine administration; and 8) personal objection for vaccine. It provides that the authorities in the Act are repealed on September 30, 2021. It makes the Act retroactive to February 14th and provides an immediate effective date. As noted in the governor's letter, which my colleague to the left of me passed out, in the letter of March 18th to Speaker Stutes, the disaster declaration is no longer needed.

Legislation is needed to support the state's response to continue the state's public health response. However, limited authority to support the state's response are needed and these are addressed in this amendment that I am offering. None of these items need a disaster declaration to accomplish the state's response.

In the event there are technical questions regarding Amendment 7, online we have Health and Social Services

Commissioner Adam Crum and Health and Social Services, Legislative Liaison Suzanne Cunningham. They are here to explain the effects of this amendment, from the administration's perspective.

3:15:53 PM

Representative Josephson spoke against Amendment 7. Given the testimony received by the House Finance Committee and the prior committee, he was unconvinced of the wisdom of the Amendment. For example, the Alaska State Hospital and Nursing Home Association (ASHNHA) reported that the Centers for Medicare and Medicaid Services (CMS) would not issue blanket waivers pursuant to 1115. He elaborated that the legislature could no longer have COVID screening offsites within federal law. He elaborated that there would be no more waivers of certain physical environment requirements which allow for surge capacity and patient quarantine facilities in non-facility spaces. He reported that flexibility related to occupational licensing would end.

Representative Josephson continued to address the amendment. He stated that fundamentally he had to trust in the wisdom of the Alaska Municipal League, the Alaska Emergency Medicine Associates, the American College of Emergency Physicians, Providence Health Services, the Food Bank, Catholic Social Services, the Advanced Practice Registered Nurse Alliance, pharmacists, the Anchorage Economic Development Corporation, as well as the Alaska State Chamber of Commerce.

Representative Josephson addressed the idea that the governor's bill provided everything the state needed. He pointed out that the governor's letter from the previous day highlighted four things the governor needed, all of which were included in the bill. He reiterated his objection to the amendment.

3:17:55 PM

Representative Rasmussen supported the amendment. She believed the most important voices the legislature needed to listen to belonged to Alaskans. She highlighted that a recent poll had been distributed by the Department of Health and Social Services as a follow up to a poll from November. She detailed that in November, 14 percent of Alaskans had reported they believed the worst of the

pandemic was over and in February, 78 percent of Alaskans believed the worst was over. Additionally, in November, 41 percent of respondents believed government would go too far in restricting activities of Alaskans and 52 percent believed government would not go far enough. In February, 48 percent believed government would go too far in restricting activities and 45 percent believed government would not go far enough. She shared that many of her constituents had reached out to her. She believed the administration had worked closely with Representative Thompson on the amendment, which included the powers the administration had requested. She believed it was what Alaskans were asking for. She stated that the amendment provided the tools needed to navigate safely out of the pandemic. She thought it was a policy that would reach broad consensus in the legislature and with the administration. She reasoned that the amendment would benefit Alaskans and provide the administration with the necessary tools as quickly as possible. She urged support for the amendment.

[3:20:11 PM](#)

Representative Carpenter believed the bill was likely to be challenged and would delay all of the good things the governor needed. He would like to be able to support the amendment. He cited language in the governor's letter [dated March 18, 2021] reading "Though the above items need legislation, none need a disaster declaration, nor the broad authorities contained within the Alaska Disaster Act, to occur." He remarked that the bill and Amendment 7 would address the issues the governor needed; however, he believed it was still acting on the broad authorities the governor had stated he did not need. He wanted to draw a compromise between agencies that believed another disaster declaration was needed and the public who did not want to see another disaster act. He had a conceptual amendment that would delete all of the material on page 2 of the amendment (lines 6 through 22) that gave the governor the broad authorities that the governor had stated he did not need. He requested a brief at ease to distribute the conceptual amendment.

[3:22:04 PM](#)

AT EASE

[3:29:42 PM](#)

RECONVENED

Representative Carpenter MOVED to ADOPT Conceptual Amendment 1 to Amendment 7 (copy on file):

Page 2, lines 6 - 22
Delete all material

Page 4, line 21
Delete "September 30, 2021."
Insert "May 31, 2021."

Page 6, line 2
Delete "September 30, 2021."
Insert "May 31, 2021."

Page 5, line 28
Insert "(c) A person may not be held liable for an action taken on, before, or after the effective date of this Act that complies with or does not comply with an order, proclamation, or declaration adopted by the Governor to respond to the declaration of a public health disaster emergency or to respond to this Act."

Representative Thompson OBJECTED.

Representative Carpenter explained that the governor had indicated that he did not need the broad authorities contained within the Alaska Disaster Act. He read from Amendment 7, [page 2], line 9: "(1) issue an order or regulation necessary to implement sections 2-10 of this Act;" which was taken directly from Section 26.23.020(b). He furthered that (2) was taken directly from Section 26.23.020(g)(1), (3) was taken directly from Section 26.23.020(g)(2), (4) on line 18 was taken directly from Section 26.23.020(g)(7), and (5) on line 21 was taken from Section 26.23.020(g)(10). He believed the list contained the broad powers that were not necessary.

Representative Carpenter pointed out that the remainder of the bullet points highlighted in the governor's letter were addressed within the amendment or within the bill already. He highlighted the ability to allocate and distribute vaccines and therapeutics [bullet point 1 in the governor's letter] as an example. He read language on page 2, line 28 of Amendment 7: "(1) coordinate, allocate, distribute, and manage the state's vaccination and therapeutic response to

the novel coronavirus disease (COVID-19) pandemic..." He stated that the items needed by the governor would still be covered. He explained that the conceptual amendment would remove language the governor did not need and that members of the public were not interested in seeing go forward.

Representative Carpenter pointed to pages 4 and 6 of Amendment 7. He explained that the conceptual amendment would change the extension date from September 30 to May 31. He moved to page 5, line 28 of Amendment 7, where the conceptual amendment would insert the broader liability protection that was included in the committee substitute.

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Representative Edgmon requested to hear from the administration about the topic. He remarked that the committee was considering the governor's bill and an amendment he believed was endorsed by the governor. Additionally, there was a letter from the governor, and a late arriving conceptual amendment that would nullify an amendment the committee had just passed. He wanted to understand what was going on.

ADAM CRUM, COMMISSIONER, DEPARTMENT OF HEALTH AND SOCIAL SERVICES (via teleconference), noted that he did not have a copy of the conceptual amendment other than the description given. He could not speak to whether the conceptual amendment included any language that addressed enabling the enhanced allotment of the SNAP [Supplemental Nutrition Assistance Program] benefits to continue. He referenced a statement by Representative Josephson about ASHNHA and clarified that a letter had been received several days earlier from CMS stating that the 1135 waivers tied to the public health emergency would remain in place absent of state action. He asked if Representative Edgmon had a specific question.

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Representative Edgmon asked Commissioner Crum to restate his last statement.

Commissioner Crum asked which specific item Representative Edgmon wanted information on.

Representative Edgmon explained he was trying to understand what the governor supported and did not support. He remarked that the committee was considering the governor's bill with an amendment he believed was endorsed by the governor, which would fundamentally change the bill. The committee also had a letter from the previous day from the governor in addition to a conceptual amendment, which he believed was being represented by a member of the committee as something the governor wanted. He was unclear on what the governor wanted.

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Representative Thompson asked Commissioner Crum for verification he did not have a copy of the conceptual amendment.

Commissioner Crum confirmed that he did not have a copy of the conceptual amendment by Representative Carpenter.

Representative Thompson explained the conceptual amendment would delete all material on page 2, lines 6 through 22 of Amendment 7.

Representative Edgmon asked if the conceptual amendment was being offered on behalf of the governor or if it reflected the sponsor's representation of what the governor was trying to accomplish.

Representative Carpenter clarified that the conceptual amendment was not being offered at the governor's request.

Representative Edgmon thought he had heard that Representative Carpenter was interpreting what the governor was trying to accomplish and the conceptual amendment had been offered to get the governor where he needed to go.

Representative Carpenter clarified that the governor's letter indicated the governor was not requesting the broad authorities contained within the disaster act. He stated the broad authorities were found within the amendment that he had created a conceptual amendment for. He explained that even though the governor was not asking for the broad authorities, the authorities were included in Amendment 7; therefore, he had offered a conceptual amendment to remove them. He stated that the governor had not asked him to offer the conceptual amendment.

Co-Chair Merrick asked if Representative Edgmon wanted further clarification from the administration.

Representative Edgmon replied affirmatively. He considered that the administration may need more time to evaluate the conceptual amendment to Amendment 7.

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Representative Carpenter asked whether the department could speak to the reason page 2, lines 6-22 of Amendment 7 were necessary to achieve the governor's four priorities listed in his letter addressed to the legislature. He read the priorities listed in the governor's letter:

- The ability to allocate and distribute vaccines and therapeutics.
- Limited immunity for officials performing their duties related to the state's response plan.
- The continued use of enhanced telehealth services.
- Necessary authority accessing federal relief funding as they pertain to the state's continued response and nexus to the federal public health emergency and major disaster declaration.

Commissioner Crum responded that the four authorities had been requested by the administration to continue the response. How the legislature provided for the four authorities to continue the response was at the legislature's discretion.

Representative Carpenter asked if the governor required power under Section 26.23.020, subsections (b) and (g) to accomplish the four things requested in his letter.

Commissioner Crum could not speak to the exact items to give the administration the four authorities.

Representative Rasmussen asked the commissioner to highlight the difference between Section 2 that described powers of the governor and Section 3 that described powers for DHSS in Amendment 7.

Commissioner Crum responded that [within Amendment 7] the powers of the governor included the ability to issue regulation necessary [to implement Sections 2 through 10], suspend provisions and waive regulatory authority. He explained that the items had been useful throughout the response, but they were not primary items the administration had identified to continue. He stated that the authorities necessary for DHSS to have the ability to distribute vaccines and therapeutics, liability and immunity for public health officials, items involving telehealth under Department of Commerce, Community and Economic Development (DCCED), and the ability to continue work with federal partners on funding. He could not speak to the exact language necessary to achieve the authorities.

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Representative Rasmussen asked if removing the governor's authority by deleting lines 6-12 on page 2 of Amendment 7 (as proposed by the conceptual amendment) would impact other departments. She observed that it did not give power to DCCED, the Department of Administration, or any other departments that may need regulatory suspension. She wondered if it was necessary for the governor to have the powers as the overarching executive of the state rather than giving the powers only to DHSS. She believed the conceptual amendment aimed to give the powers to DHSS only.

Commissioner Crum deferred the question to the Department of Law (DOL).

SUSAN POLLARD, ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF LAW (via teleconference), asked to hear the question again.

Representative Rasmussen explained that the proposed conceptual amendment would delete lines 6-22 on page 2 of Amendment 7. She relayed that the specific lines provided powers to the governor, while Section 3 provided powers to DHSS. She asked if other departments would still have the tools they needed. Alternatively, she wondered if DHSS would be the only department with the option to suspend regulations.

Ms. Pollard responded that Section 2 of Amendment 7 provided for a limited but necessary bootstrapping of powers of the governor in order to implement the rest of

the bill provisions. She explained her potential concern with the conceptual amendment by stating that Section 2 appeared to allow for limited but necessary power for the governor to fill the any gap that may occur within a department such as DHSS or DMVA.

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Representative Carpenter asked if DOL had reviewed Amendment 7.

Ms. Pollard replied that the department had reviewed Amendment 7. She asked for verification that the committee was considering Amendment 7, 32-GH1011\B.26.

Co-Chair Merrick responded affirmatively.

Representative Carpenter cited AS 26.23.020(g)(1) and (2) [under Section 2 of Amendment 7] and read (2):

(2) suspend the provisions of a regulatory statute prescribing procedures for the conduct of state business, or the orders or regulations of a state agency, if compliance with the provisions of the statute, order, or regulation would prevent, or substantially impede or delay, action necessary to respond to and aid in the recovery from the pandemic related to the novel coronavirus disease (COVID-19);

Representative Carpenter asked why the provision would be necessary to allocate or distribute vaccines and therapeutics, limited immunity for officials performing their duties, enhanced telehealth services, or access federal funding that were already written in the amendment or bill.

Ms. Pollard believed Commissioner Crum could answer more specifically about how DHSS may be affected. She noted that throughout the disaster, the ability to suspend statute and regulations was identified by a number of agencies as helpful and necessary in order to address some situations caused by the pandemic. She stated that questions on specific subject areas may be best answered by particular agencies.

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Representative Carpenter stated that he needed a legal opinion, not a department opinion. He was struggling to understand why the power to eliminate a regulation that was not spelled out in the limited authority requested by governor was necessary. He remarked that the goal was to give the governor the needed specifics and not a broad power to eliminate regulations as he saw fit. He reasoned that if there were regulations that needed to be eliminated to address the four bullet points [outlined in the governor's letter], they would be listed in the bill or in Amendment 7. He was trying to understand from a legal perspective why AS 26.23.020(g)(1) was required to do any of the things the governor was requesting. He believed the items were already addressed in other sections of the bill.

Ms. Pollard understood that Representative Carpenter was asking for a legal opinion; however, but to some extent there may be some policy implications because agencies could weigh in on which particular statutes and regulations may require suspension in order for the state to address the need - in a limited way - to keep state business going through the pandemic.

Representative Carpenter directed a question to Commissioner Crum. He read from page 2, line 28 of Amendment 7:

(1) coordinate, allocate, distribute, and manage the state's vaccination and therapeutic response to the novel coronavirus disease (COVID-19) pandemic;

Representative Carpenter asked what regulations not already addressed in the bill or in Amendment 7 would need the governor's authority to suspend regulations in order to achieve the aforementioned provision. He did not want to have to go through all of the items in the bill or in Amendment 7 that solved the four bullets [in the governor's letter]. He thought it was necessary to understand why, if something was not listed in the limited authority, it would be necessary to grant a broad authority to eliminate regulations as the governor saw fit.

Co-Chair Merrick relayed that the meeting would conclude as there was another meeting scheduled in the room at 4:00 p.m.

Representative Edgmon requested to have the conceptual amendment written up by Legislative Legal Services in order for the committee to understand how it impacted Amendment 7.

HB 76 was HEARD and HELD in committee for further consideration.

Co-Chair Merrick reviewed the schedule for the next meeting.

ADJOURNMENT

[3:59:06 PM](#)

The meeting was adjourned at 3:59 p.m.